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and plaintiff brings error. Reversed, and judgment entered for plaintiff.

*Browning & Browning*, of Orange, for plaintiff in error.

*V. R. Shackelford*, of Orange, and *R. B. Tunstall*, of Norfolk, for defendant in error.

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HAMMAN et al. v. MILLER.

Nov. 12, 1914.

[83 S. E. 382.]

**1. Boundaries (§ 35\*)—Establishment—Admissibility of Evidence—Statutes.**—Where both parties claimed under a deed of partition and one of the disputes was as to the location on the ground of the division line between certain lots as partitioned, evidence that an old fence was on, or intended to be on, the division line, and that the parties or their predecessors in title had recognized it as the line between the two lots, was admissible, in view of act of March 4, 1912 (Acts 1912, c. 74), providing that in the determination of boundaries the trial shall be conducted as other trials at law.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 153-155, 157-159, 163, 165, 177-183; Dec. Dig. § 35.\* 2 Va.-W. Va. Enc. Dig. 602.]

**2. Boundaries (§ 36\*)—Admissibility of Evidence—Deeds.**—In a proceeding to establish a disputed boundary, where the establishment of a corner at a hickory and two black oaks referred to in a previous deed of partition aided the court in ascertaining the division line in dispute, deeds calling for a corner at a hickory and two black oaks were admissible, under the general rule that whenever deeds conveying adjacent land identify and fix a disputed boundary, they are admissible in evidence.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 160-162, 164, 166-176; Dec. Dig. § 36.\* 2 Va.-W. Va. Enc. Dig. 601.]

**3. Appeal and Error (§ 1010\*)—Judgment—Conclusiveness.**—Where a case at law, such as an action to establish a disputed boundary is submitted to the court without a jury, and a party excepts to the decision as contrary to the evidence, and only the evidence is certified, the appellate court will give the judgment of the trial court the same effect as a verdict.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3979-3982, 4024; Dec. Dig. § 1010.\* 1 Va.-W. Va. Enc. Dig. 577.]

**4. Boundaries (§ 52\*)—Establishment—Directing Survey.**—Under Act March 4, 1912 (Acts 1912, c. 74), providing for the ascertainment of boundaries, and that the court, upon application of either

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

party, might order any survey necessary, the court, after ascertaining and designating by calls a disputed boundary line, might, of its own motion, direct the county surveyor to survey such line, mark it with suitable monuments, and report a survey, with plat, to be made a part of the record in the cause.

[Ed. Note.—For other cases, see *Boundaries*, Cent. Dig. §§ 253-260, 262, 263; Dec. Dig. § 52.\* 2 Va.-W. Va. Enc. Dig. 607.]

**5. Boundaries (§ 52\*)—Establishment—Survey—Objections.**—In such case, where there was no exception to the surveyor's report, either as not in accordance with the directions or as made without notice, objections that the direction to the surveyor was too indefinite, that the survey was to be made during the term without notice, that it involved persons not parties to the proceeding, and that defendants were not permitted to except to the action of the surveyor, or to the survey, were without merit.

[Ed. Note.—For other cases, see *Boundaries*, Cent. Dig. §§ 253-260, 262, 263; Dec. Dig. § 52.\* 2 Va.-W. Va. Enc. Dig. 607.]

**6. Boundaries (§ 43\*)—Pleading—Admission or Offer.**—In an action to settle a disputed boundary, where plaintiff offered in his petition to accept a certain line as the true boundary, but defendant did not accept such offer, and contested plaintiff's right to such line defendant cannot claim that it was error not to limit plaintiff's recovery to the offer.

[Ed. Note.—For other cases, see *Boundaries*, Cent. Dig. § 208; Dec. Dig. § 43.\* 2 Va.-W. Va. Enc. Dig. 594.]

Error to Circuit Court, Shenandoah County.

Action by one W. F. Miller against Fannie Hamman and others. Judgment for plaintiff, and Fannie Hamman and another bring error. Affirmed.

*Walton & Walton* and *F. H. Brumback*, all of Woodstock, for plaintiffs in error.

*Tavener & Bauserman*, of Woodstock, for defendant in error.

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WELLS' ADM'R *v.* SUTHERLAND COAL & COKE CO.

Nov. 12, 1914.

[83 S. E. 384.]

**1. Master and Servant (§ 276\*)—Death of Mine Employee—Negligence—Sufficiency of Evidence.**—Evidence in an action for the death of a mine employee from inhaling deadly vapors held insufficient to

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.